

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2011-19

DAVID N. KENNEALLY
2662 Oak Knoll Drive
Rossmoor, CA 90720

Certified Public Accountant
Certificate No. 56267

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on December 26, 2012.

It is so ORDERED November 26, 2012



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
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Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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12 In the Matter of the Accusation Against:

13 **DAVID N. KENNEALLY**
14 **2662 Oak Knoll Drive**
Rossmoor, CA 90720

15 **Certified Public Accountant**
16 **Certificate No. 56267**

17 Respondent.

Case No. AC-2011-19

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
23 Accountancy. She brought this action solely in her official capacity and is represented in this
24 matter by Kamala D. Harris, Attorney General of the State of California, by Carl W. Sonne,
25 Deputy Attorney General.

26 2. Respondent David N. Kenneally (Respondent) is represented in this proceeding by
27 attorney Stephanie Sessions Perkins, whose address is: Chapman, Glucksman, Dean,
28 Roeb & Barger, 11900 W. Olympic Boulevard Suite 800, Los Angeles, California 90064.

3. On or about October 31, 1990, the California Board of Accountancy issued Certified Public Accountant Certificate No. 56267 to David N. Kenneally (Respondent). The Certified Public Accountant Certificate was in full force and effect at all times relevant to the charges brought in First Amended Accusation No. AC-2011-19 and will expire on October 31, 2014, unless renewed.

JURISDICTION

4. First Amended Accusation No. AC-2011-19 (Accusation) was filed before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 7, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. AC-2011-19 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2011-19. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

/ / /

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. AC-2011-19.

4 10. Respondent agrees that his Certified Public Accountant Certificate is subject to
5 discipline and he agrees to be bound by the CBA's probationary terms as set forth in the
6 Disciplinary Order below.

7 CIRCUMSTANCES IN MITIGATION

8 11. Respondent David N. Kenneally has never been the subject of any disciplinary action.
9 He is admitting responsibility at an early stage in the proceedings. Furthermore, he actively
10 cooperated in the investigation of this and a related matter.

11 RESERVATION

12 12. The admissions made by Respondent herein are only for the purposes of this
13 proceeding, or any other proceedings in which the California Board of Accountancy or other
14 professional licensing agency is involved, and shall not be admissible in any other criminal or
15 civil proceeding.

16 CONTINGENCY

17 13. This stipulation shall be subject to approval by the California Board of Accountancy.
18 Respondent understands and agrees that counsel for Complainant and the staff of the California
19 Board of Accountancy may communicate directly with the CBA regarding this stipulation and
20 settlement, without notice to or participation by Respondent or his counsel. By signing the
21 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
22 to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to
23 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
24 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
25 between the parties, and the CBA shall not be disqualified from further action by having
26 considered this matter.

27 ///

28 ///

14. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

15. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 56267 issued to Respondent David N. Kenneally (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. Suspension

Certified Public Accountant Certificate No. 56267 issued to respondent David N. Kenneally is suspended for a period of ninety (90) days. During the period of suspension the respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. Cost Reimbursement

Respondent shall reimburse the CBA \$5,000.00 for its investigation and prosecution costs.

The payment shall be made within one (1) year from the Effective Date of this Decision or,

1 alternatively, by such other payment plan approved by the staff of the CBA, provided that full
2 payment is received by the CBA within 30 months of the Effective Date of the Decision herein.

3 **4. Submit Written Reports**

4 Respondent shall submit, within 10 days of completion of the quarter, written reports to the
5 CBA on a form obtained from the CBA. The respondent shall submit, under penalty of perjury,
6 such other written reports, declarations, and verification of actions as are required. These
7 declarations shall contain statements relative to respondent's compliance with all the terms and
8 conditions of probation. Respondent shall immediately execute all release of information forms
9 as may be required by the CBA or its representatives.

10 **5. Personal Appearances**

11 Respondent shall, during the period of probation, appear in person at interviews/meetings as
12 directed by the CBA or its designated representatives, provided such notification is accomplished
13 in a timely manner.

14 **6. Comply With Probation**

15 Respondent shall fully comply with the terms and conditions of the probation imposed by
16 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
17 its monitoring and investigation of the respondent's compliance with probation terms and
18 conditions.

19 **7. Practice Investigation**

20 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
21 professional practice. Such a practice investigation shall be conducted by representatives of the
22 CBA, provided notification of such review is accomplished in a timely manner.

23 **8. Comply With Citations**

24 Respondent shall comply with all final orders resulting from citations issued by the
25 California Board of Accountancy.

26 **9. Tolling of Probation for Out-of-State Residence/Practice**

27 In the event respondent should leave California to reside or practice outside this state,
28 respondent must notify the CBA in writing of the dates of departure and return. Periods of non-

1 California residency or practice outside the state shall not apply to reduction of the probationary
2 period, or of any suspension. No obligation imposed herein, including requirements to file
3 written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended
4 or otherwise affected by such periods of out-of-state residency or practice except at the written
5 direction of the CBA.

6 **10. Violation of Probation**

7 If respondent violates probation in any respect, the CBA, after giving respondent notice and
8 an opportunity to be heard, may revoke probation and carry out the disciplinary order that was
9 stayed. If an accusation or a petition to revoke probation is filed against respondent during
10 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
11 probation shall be extended until the matter is final.

12 The CBA's Executive Officer may issue a citation under California Code of Regulations,
13 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
14 licensee on probation.

15 **11. Completion of Probation**

16 Upon successful completion of probation, respondent's license will be fully restored.

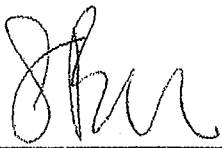
17 ACCEPTANCE

18 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
19 discussed it with my attorney, Stephanie Sessions Perkins. I understand the stipulation and the
20 effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated
21 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
22 bound by the Decision and Order of the California Board of Accountancy.

23
24 DATED: 10/31/12

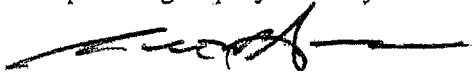
David N. Kenneally
25 DAVID N. KENNEALLY
26 Respondent
27
28

1 I have read and fully discussed with Respondent David N. Kenneally the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 11/1/12 
6 Stephanie Sessions Perkins
7 Attorney for Respondent

8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the California Board of Accountancy of the Department of
11 Consumer Affairs.

12
13 Dated: November 5, 2012
14 Respectfully submitted,
15 KAMALA D. HARRIS
16 Attorney General of California
17 JAMES M. LEDAKIS
18 Supervising Deputy Attorney General
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21 CARL W. SONNE
22 Deputy Attorney General
23 Attorneys for Complainant
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Exhibit A

First Amended Accusation No. AC-2011-19

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2011-19

13 **DAVID N. KENNEALLY**
2662 Oak Knoll Drive
14 Rossmoor, CA 90720

FIRST AMENDED ACCUSATION

15 **Certified Public Accountant**
16 **Certificate No. 56267**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Patti Bowers (Complainant) brings this First Amended Accusation (Accusation)
22 solely in her official capacity as the Executive Officer of the California Board of Accountancy,
23 Department of Consumer Affairs (CBA).

24 2. On or about August 3, 1990, the California Board of Accountancy issued Certified
25 Public Accountant Certificate Number 56267 to David N. Kenneally (Respondent). The Certified
26 Public Accountant Certificate was renewed periodically through October 31, 2000. Effective
27 November 1, 2000, the certificate was renewed through October 31, 2002 on an inactive basis.
28 From November 1, 2002 through December 29, 2002, the certificate was expired and not valid

1 due to the non-payment of the renewal fee and failure to submit to the CBA a declaration of
2 compliance with continuing education requirements. Effective December 30, 2002, Respondent's
3 certificate was timely renewed on an inactive basis every two years. Respondent's certificate will
4 now expire on October 31, 2012, unless renewed.

5 JURISDICTION

6 3. This Accusation is brought before the CBA under the authority of the following laws.
7 All section references are to the Business and Professions Code unless otherwise indicated.

8 4. Section 5063(a)(3) and (c) state:

9 (a) A licensee shall report to the board in writing of the occurrence of any of the
10 following events occurring on or after January 1, 1997, within 30 days of the date the
11 licensee has knowledge of these events:

12 (3) The cancellation, revocation, or suspension of the right to practice as a certified
13 public accountant or a public accountant before any government body or agency.

14 (c) A licensee shall report to the board in writing, within 30 days of the entry of
15 the judgment, any judgment entered on or after January 1, 2003, against the
16 licensee in any civil action alleging any of the following:

17 (1) Dishonesty, fraud, gross negligence, or negligence.

18 (2) Breach of fiduciary responsibility.

19 (3) Preparation, publication, or dissemination of false, fraudulent, or
20 materially misleading financial statements, reports, or information.

21 (4) Embezzlement, theft, misappropriation of funds or property, or
22 obtaining money, property, or other valuable consideration by fraudulent means or
23 false pretenses, or other errors or omissions.

24 (5) Any actionable conduct by the licensee in the practice of public
25 accountancy, the performance of bookkeeping operations, or other professional
26 practice.

27 5. Section 5100 states in pertinent part::

28 After notice and hearing the board may revoke, suspend, or refuse to renew
any permit or certificate granted under Article 4 (commencing with Section 5070)
and Article 5 (commencing with Section 5080), or may censure the holder of that
permit or certificate for unprofessional conduct that includes, but is not limited to,
one or any combination of the following causes:

1 (h) Suspension or revocation of the right to practice before any
2 governmental body or agency.

3 "(l) The imposition of any discipline, penalty, or sanction on a registered
4 public accounting firm or any associated person of such firm, or both, or on any
5 other holder of a permit, certificate, license, or other authority to practice in this
6 state, by the Public Company Accounting Oversight Board or the United States
Securities and Exchange Commission, or their designees under the
Sarbanes-Oxley Act of 2002 or other federal legislation."

7 6. Section 5107(a) of the Code states:

8 The executive officer of the board may request the administrative law judge,
9 as part of the proposed decision in a disciplinary proceeding, to direct any holder
10 of a permit or certificate found to have committed a violation or violations of this
chapter to pay to the board all reasonable costs of investigation and prosecution of
11 the case, including, but not limited to, attorneys' fees. The board shall not recover
costs incurred at the administrative hearing.

12 7. Section 5109 of the Code provides that the expiration, cancellation, forfeiture or
13 suspension of a license shall not deprive the CBA of jurisdiction to proceed with any
14 investigation of or action or disciplinary action against the licensee, or to render a decision
15 suspending or revoking a license.

16 FACTS

17 8. On or about September 10, 2010, the Securities and Exchange Commission issued an
18 "Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's
19 Rules of Practice, Making Findings, and Imposing Remedial Sanctions," (SEC Order) which
20 states in pertinent part:

21 1. ... Kenneally was New Century Financial Corporation's (New Century)
22 controller (July 2005 to March 2007) and assistant controller (July 2003 to July
2005). Kenneally is licensed as a CPA in California, but his license is inactive.

23 2. New Century was a real estate investment trust with its principal
24 executive offices in Irvine, California. New Century's stock was registered with
the SEC pursuant to Section 12(b) of the Securities Exchange Act of 1934
25 ("Exchange Act"), and traded on the New York Stock Exchange until it was
delisted on March 13, 2007. On April 2, 2007, New Century filed for Chapter 11
26 bankruptcy protection. On July 15, 2008, the bankruptcy court entered an order
confirming a liquidation plan effective August 1, 2008, which provided for the
27 transfer of all remaining assets to a liquidating trust for the benefit of unsecured
creditors. After all distributions have been made, the liquidating trustee will file a
28 certificate of dissolution on behalf of New Century.

1 3. On December 7, 2009, the Commission filed a complaint against Mr.
2 Kenneally in SEC v. Morrice, Civil Action No. CV 09-1426 DDP (FMOx), in the
3 United States District Court for the Central District of California. On August 17,
4 2010, a final judgment was entered by consent against Mr. Kenneally, permanently
5 enjoining him from future violations of Section 10(b) and 13(b) of the Exchange
6 Act, 15 U.S.C. §§ 78j(b) and 78m(b)(5), and Rules 10b-5, 13b2-1, and 13b2-2
7 thereunder, 17 C.F.R. §§ 240.10b-5, 240.13b2-1, and 240.13b2-2, and from aiding
8 and abetting violations of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a),
9 and Rules 12b-20, 13a-11, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20,
10 240.13a-11, and 241.13a-13.

11 4. The Commission's complaint alleges, among other things, that in the
12 second and third quarters of 2006, Mr. Kenneally, contrary to Generally Accepted
13 Accounting Principles, implemented changes to New Century's method for
14 estimating its' loan repurchase obligation and failed to ensure that New Century's
15 backlog of pending loan repurchase requests were properly accounted for,
16 resulting in an understatement of New Century's repurchase reserve and a material
17 overstatement of New Century's financial results. The complaint alleges that Mr.
18 Kenneally, by his conduct, violated Sections 10(b) and 13(b)(5) of the Exchange
19 Act and Rules 10-b-5, 13 b2-1, and 13b2-2 thereunder, and aided and abetted New
20 Century's violations of Section 13(a) of the Exchange Act and Exchange Act
21 Rules 12b-20, 13a-11, and 13a-13 thereunder.

22 In view of the foregoing, the Commission deems it appropriate and in the public
23 interest to impose the sanction agreed to in Respondent Kenneally's Offer.

24 Accordingly, it is hereby ORDERED, effective immediately, that:

- 25 A. Mr. Kenneally is suspended from appearing or practicing before the
26 Commission as an accountant.
- 27 B. After three years from the date of this order, Respondent may request that the
28 Commission consider his reinstatement by submitting an application...to
29 resume appearing or practicing before the Commission ...
- 30 C. The Commission will consider an application by Respondent to resume
31 appearing or practicing before the Commission provided that his state CPA
32 license is current and he has resolved all other disciplinary issues with the
33 applicable state boards of accountancy...."

34 9. As set forth in the SEC Order described above, on August 17, 2010, the court
35 entered a civil judgment against Respondent. Pursuant to that judgment, Respondent became
36 liable for disgorgement in the amount of \$126,676, together with prejudgment interest thereon in
37 the amount of \$23,324, for a total of \$150,000, and a civil penalty in the amount of \$32,500
38 pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

39 10. Respondent did not timely notify the CBA of the SEC Order or the entry of the
40 SEC's judgment against Respondent on August 17, 2010 as set forth in paragraphs 8 and 9 above.
41 On October 20, 2010, the CBA mailed an inquiry letter to Respondent advising him that the CBA

1 had opened an investigation related to the SEC's actions against him as well Respondent's failure to
2 notify the CBA of the SEC's actions. The letter also requested Respondent to provide the CBA with
3 a detailed description of his current employment and practice of public accountancy.

4 11. On December 3, 2010, Respondent responded to the CBA's inquiry and sent to the
5 CBA information regarding his SEC actions against him.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Suspension of Practice by Governmental Agency)

8 12. Respondent is subject to disciplinary action for violation of section 5100(h) of the
9 Code in that he was suspended of his right to practice before a governmental body or agency, as is
10 described in paragraphs 8 to 11, incorporated herein by reference as if fully set forth herein.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Imposition of Discipline by the U.S. Securities and Exchange Commission)

13 13. Respondent is subject to disciplinary action for violation of section 5100(l) of the
14 Code in that he was disciplined, penalized, or sanctioned by the United States Securities and
15 Exchange Commission, as is described in paragraphs 8 to 11, incorporated herein by reference as
16 if fully set forth herein.

17 **THIRD CAUSE FOR DISCIPLINE**

18 (Failure to Notify CBA of Suspension)

19 14. Respondent is subject to disciplinary action under section 5100(g) for
20 violation of section 5063(a)(3) of the Code in that he failed to notify the CBA in writing within
21 30 days of his suspension from appearing or practicing before the Commission commencing
22 September 10, 2010 as is described in paragraphs 8 to 11, incorporated herein by reference as if
23 fully set forth herein.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 (Failure to Notify CBA of Judgment)

26 15. Respondent is subject to disciplinary action under section 5100(g) for
27 violation of section 5063(c) of the Code in that he failed to notify the CBA in writing within 30
28

1 days of the SEC judgment against Respondent on August 17, 2010 as is described in paragraphs 8
2 to 11, incorporated herein by reference as if fully set forth herein.

3 **PRAYER**

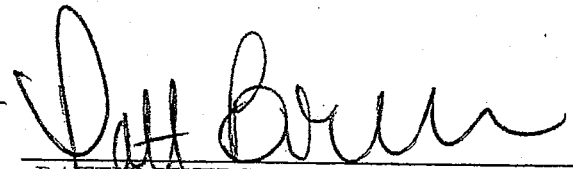
4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the California Board of Accountancy issue a decision:

6 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
7 Accountant Certificate Number 56267, issued to David N. Kenneally;

8 2. Ordering David N. Kenneally to pay the California Board of Accountancy the
9 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 5107; and

11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: August 30, 2012


15 PATTI BOWERS
16 Executive Officer
17 California Board of Accountancy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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